IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

JUL 5 1974
MICHAEL RODAK, JR., CLE

JAMES SCOTT KREAGER,

Petitioner,

against

GENERAL ELECTRIC COMPANY, FRED J. BORCH, HERMAN L. WEISS, JOHN B. MCKITTERICK, JOHN P. DONOHUE, DAVID L. BURKE, DONALD D. SCARFF, THOMAS CASTLE, ROBERT J. DIEFENTHALER, INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, HAROLD S. GENEEN, RAYMOND L. BRITTENHAM, HENRY E. BOWES, ROBERT J. THEIS, JAMES PAUL JANNUZZO, JAMES A. O'CONNELL, JOHN T. THOMPSON, CORNELL REMSEN, EDWARD J. FITZPATRICK, and TOSHIBA AMERICA, INC.,

Respondents.

JAMES SCOTT KREAGER,

Petitioner,

against

GENERAL ELECTRIC COMPANY, HERMAN L. WEISS, DAVID W. BURKE, JOHN B. MCKITTERICK, JOHN P. DONOHUE, LUTHER EARL BIRDZELL, JR., TOSHIBA AMERICA, INC. and TOKYO SHIBAURA ELECTRIC COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE GENERAL ELECTRIC RESPONDENTS IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 6827

JAMES SCOTT KREAGER,

Petitioner,

against

GENERAL ELECTRIC COMPANY, FRED J. BORCH, HERMAN L. WEISS, JOHN B. MCKITTERICK, JOHN P. DONOHUE, DAVID L. BURKE, DONALD D. SCARFF, THOMAS CASTLE, ROBERT J. DIEFENTHALER, INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, HAROLD S. GENEEN, RAYMOND L. BRITTENHAM, HENRY E. BOWES, ROBERT J. THEIS, JAMES PAUL JANNUZZO, JAMES A. O'CONNELL, JOHN T. THOMPSON, CORNELL REMSEN, EDWARD J. FITZPATRICK, and TOSHIBA AMERICA, INC.,

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JAMES SCOTT KREAGER,

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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE GENERAL ELECTRIC RESPONDENTS* IN OPPOSITION

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* The term "General Electric Respondents" throughout refers to respondents General Electric Company, Fred J. Borch, Herman L. Weiss, John B. McKitterick, John P. Donohue, David L. Burke, Donald D. Scarff, Thomas Castle, and Robert J. Diefenthaler in the first action and to General Electric Company, Herman L. Weiss, David W. Burke, John B. McKitterick, John P. Donohue and Luther Earl Birdzell, Jr. in the second action.

Opinion Below

The opinion of the Court of Appeals for the Second Circuit is not yet reported. It is reproduced as an appendix to this brief for the convenience of the Court.

Jurisdiction

The judgment of the Court of Appeals was entered on May 13, 1974 and the Petition for a Writ of Certiorari was filed on June 5, 1974. Jurisdiction of this Court apparently is invoked under Title 28 U.S.C. § 1254(1).*

Statement

These proceedings involve two related appeals which were consolidated below for purposes of oral argument. In a single opinion, the Court of Appeals affirmed both judgments rendered in favor of defendants by the United States District Court for the Southern District of New York.

The first action was commenced in March, 1968 by Mercu-Ray Industries, Inc. ("Mercu-Ray") seeking damages of $9.6 million for alleged violations of Sections 1 and 2 of the Sherman Act. The Mercu-Ray case was tried before the United States District Court for the Southern District of New York (Weinfeld, J.) and a jury in mid-June, 1973. At the conclusion of the evidence, the Court dismissed the Sherman Act Section 2 claims, claims based upon fraud and deceit (not pleaded but asserted at trial), and all claims against certain of the individual defendants.

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* Petitioner's references in the section of the Petition styled *Jurisdiction* to certain enumerated bases for jurisdiction are, apparently, references to the "Notes of Decisions" set forth in U.S. Code Annotated following the text of 28 U.S.C. § 1254.

The remaining claims under Section 1 of the Sherman Act were submitted to the jury which rendered a verdict for all defendants.

On the same day that judgment was entered in the Mercu-Ray action, petitioner, who is president and sole shareholder of Mercu-Ray, filed suit in his own name as plaintiff in the second action. The claims alleged in the second action were identical to those alleged in the Mercu-Ray action, but the *ad damnum* was increased to $750 million. The United States District Court for the Southern District of New York (Duffy, J.) dismissed the second claim stating: "The prior action disposed of all the claims asserted here." *Kreager* v. *General Electric Co., et al.*, Civil No. 73-2836 (S.D.N.Y. Sept. 25, 1973).

Subsequently, the Mercu-Ray claims were purportedly assigned to petitioner at the suggestion of the Court of Appeals in order to permit petitioner to proceed *pro se* with the appeal in view of his claimed inability to obtain counsel for the corporation after several sets of counsel had previously resigned their representation.

The appeals in both actions were argued together and the decision of the Court of Appeals was rendered on May 13, 1974. A complete statement of the factual background, as found by a jury and two District Judges, is set forth in the opinion of the Court of Appeals, which is reprinted in the appendix to this brief.

Argument

Each of petitioner's purported assignments of error was fully considered and rejected by the Court of Appeals. The opinion of the Court of Appeals sets forth the authorities upon which the General Electric respondents rely in opposition to this petition. Petitioner has made no showing of any error below which requires review of these two

actions by this Court. No issue of conflict among the Circuits, construction of state or federal law, or departure from the usual course of judicial proceedings exists.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Of Counsel:

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GILBERT, SEGALL AND YOUNG

July, 1974